C.F. 100/ (4)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 3581 /2005

PETITIONER **V.G. TAMASKAR**
Aged about 60 years
S/o. Late G.Y. Tamaskar
Advocate

Chamber : Flat No.-302
Shanti Apartments, Tikrapara
Bilaspur (C.G.)

Permanent Address
House No. 9/470 Mohan Nagar
Durg, Tahsil and District Durg
(C.G.)

P.R. No. 2661/05 V.G. Tamaskar
Presented by Shri
dated 16/10/05

VERSUS

RESPONDENTS :1. **HIGH COURT OF CHHATTISGARH**
Through : Registrar-General
High Court of Chhattisgarh,
Bilaspur (C.G.)

2. **HIGH COURT OF MADHYA PRADESH**
Through : Registrar General
High Court of Madhya-Pradesh
Jabalpur (M.P.)

3. **STATE BAR COUNCIL OF CHHATTISGARH**
Through : Secretary
State Bar Council of Chhattisgarh
High Court Premises
Bilaspur (C.G.)

4. **SHRI P.S. NAIR**
Senior Advocate Designate
M.P. 23/1958 Adv.
R/o.1570 Napier Town
Jabalpur (M.P.)

15/6/1

5. **DR. N.K. SHUKLA**
Senior Advocate Designate

6. **SHRI PRAMOD KUMAR VERMA**
Senior Advocate Designate
(CG/33/1968)

7. **SHRI KANAK TIWARI**
Senior Advocate Designate
(CG/317/1971)

8. **SHRI PRITINKAR DIWAKAR**
Senior Advocate Designate
(CG/708/1984)

9. **SHRI RAVI SHANKAR JAISWAL**
Senior Advocate Designate
(CG/1319/1988)

10 **SHRI GOURI SHANKAR AGRAWAL**
Senior Advocate Designate
(CG/313/1962)

11 **SHRI DAYARAM SHARMA**
Senior Advocate Designate
(CG/413/1962)

12. **SHRI P.K.C. TIWARI**
Senior Advocate Designate
(CG/214/1964)

13. **MR.KAZI AANWARUDDIN ANSARI**
Senior Advocate Designate
(CG/405/1968)

14. **SHRI HARI BHAGAT AGRAWAL**
Senior Advocate Designate
(CG/535/1973)

15/6/05

(6)

15. **SHRI NAVAL KISHORE AGRAWAL**
Senior Advocate Designate
(CG/185/1979)

16. **SHRI SHASHANK DUBEY**
Senior Advocate Designate
(CG/793/1982)

17. **SHRI VINAY KUMAR HARIT**
Senior Advocate Designate
(CG/77/1984)

18. **SHRI V.V.S N. MURTHY**
Senior Advocate Designate
(CG/914/1984)

19. **SHRI PRASHANT JAYSWAL**
Senior Advocate Designate
(CG/846/1985)

20. **SHRI PRASHANT KUMAR MISHRA**
Senior Advocate Designate
(CG/924/1987)

21. **SHRI MANINDRA SHRIVASTAVA**
Senior Advocate Designate
(CG/1075/1987)

Respondents 5 to 21 Through : Secretary High Court Bar Association, High Court Premises, Bilaspur, Tahsil and District Bilaspur.

PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : **Hon'ble Shri A. K. Patnaik, C.J.**
& Hon'ble Shri Satish K. Agnihotri, J

WRIT PETITION NO. 2681 OF 2005

V.G. Tamaskar

Versus

High Court of Chhattisgarh & Others

Present: Petitioner Mr. V.G. Tamaskar in person.

ORDER

(Passed on 27th July, 2005)

The following order of the Court was passed by **A.K. Patnaik, C.J.**

The petitioner is an advocate practising in the High Court of Chhattisgarh and has a background of public service. He has filed this writ petition praying for quashing the designation of respondents 5 to 21 as Senior Advocates of this Court and for directing the High Court of Chhattisgarh to designate all those lawyers who had applied to be designated as Senior Advocates by issuing appropriate writ of certiorari / mandamus. The petitioner has also prayed for directing the High Court of Chhattisgarh to frame separate rules for designating the lawyers as Senior Advocates by issuing appropriate writ of mandamus.

2. The petitioner who has appeared in person submitted that a Full Bench of the Allahabad High Court has held in the case of **Democratic**

Bar Association vs. High Court of Judicature at Allahabad, reported in **2001 (5) SLR 88** that writ petition filed by Association of Advocates and the Advocates practising in the High Court of Allahabad questioning the legality of the rules for designation of Senior Advocates was maintainable. He submitted that in view of the said decision of the Full Bench of the Allahabad High Court, the present writ petition by which designation of Senior Advocates of this Court has been challenged, is maintainable at the instance of the petitioner.

3. We have no doubt in our mind that an Advocate of this Court has the locus standi to file a writ petition challenging the decision of the High Court to designate a Senior Advocate. In the case of **S.P. Gupta vs. President of India**, reported in **AIR 1982 SC 149**, the Supreme Court has held that practising lawyers have vital interest in the maintenance of a fearless and an independent judiciary to ensure fair and fearless justice to the litigants and can challenge a circular issued by the Law Minister with regard to the short term extensions of the sitting Additional Judges of High Courts and such practising lawyers either in their individual capacity or representing Lawyers' Association have not merely sufficient interest but special interest of their own in the subject matter of the writ petition. Similarly, practising lawyers of the High Court of Chhattisgarh have sufficient interest in the subject matter of the present writ petition namely, designation of Senior Advocates of the High Court of Chhattisgarh and we cannot dismiss the present writ petition at the threshold on the ground that a practising advocate does not have any locus standi to file a writ petition challenging the designation of Senior Advocate by the High Court. But we make it clear that when a challenge is made by a practising Advocate to the designation of the Senior Advocate by the Court, the Court will not

interfere with the decision of the High Court to designate an Advocate as Senior Advocate except on well settled principles of judicial review.

4. Mr. V.G. Tamaskar next submitted that the High Court of Madhya has framed the rules in exercise of its powers under Section 34(1) read with Section 16(2) of the Advocates Act, 1961 laying down therein the procedure for designation of Senior Advocates as well as the manner in which the applications will be filed by an Advocate for designating him as a Senior Advocate and the manner in which such applications will be dealt with, but the aforesaid Rules framed by the High Court of Madhya Pradesh have not been followed by the High Court of Chhattisgarh while designating the respondents 5 to 21 as Senior Advocates of this Court. Mr. Tamaskar vehemently submitted that if respondents 5 to 21 have not been designated in accordance with the provisions of the rules framed by High Court of Madhya Pradesh, then their designation as Senior Advocates is invalid. He submitted that till the rules for designation of Senior Advocate are framed by the Chhattisgarh High Court, the rules framed by High Court of Madhya Pradesh are in force and have to be applied by the High Court of Chhattisgarh. In support of his submission he relied on the provisions of Section 25 of the M.P. Reorganization Act, 2000.

5. In view of the said submission made by Mr. V.G. Tamaskar, we called for records of the Registry of this Court with regard to the designation of the respondents 5 to 21 as Senior Advocates of this Court by order dated 20-07-2005 and pursuant to the said order dated 20-07-2005 the records regarding designation of the respondents 5 to 21 as Senior Advocates, have been placed before us by the Registry. On a perusal of the said records we find that on 09-01-2002 the Full Court of

Chhattisgarh High Court has resolved that respondent No.5 – Dr. N.K. Shukla, Shri V.D. Bajpai, Shri Shree Kumar Agrawal and Shri Suresh Kumar Sinha be designated as Senior Advocates under Section 16 (2) of the Advocates Act 1961. On perusal of the said records we also find that on 06-01-2005 the Full Court of Chhattisgarh High Court has resolved to designate respondents 6 to 21 as Senior Advocates considering their standing at the Bar and their performance. There is no indication whatsoever in the resolutions of the Full Court of Chhattisgarh High Court adopted on 09.01.2002 and 06.01.2005 that the decisions to designate respondents 5 to 21 were taken after considering the rules framed by the High Court of Madhya Pradesh for designation of Senior Advocates. All that the said resolutions indicate is that Senior Advocates have been designated in accordance with the provisions of Section 16 (2) of Advocates Act, 1961.

6. Section 25 of the M.P. Reorganization Act on which great reliance has been placed by Mr. V.G. Tamaskar is quoted herein below:

> "**25. Practice and Procedure in Chhattisgarh High Court.** – Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Madhya Pradesh shall, with the necessary modifications, apply in relation to the High Court of Chhattisgarh and accordingly, the High Court of Chhattisgarh shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Madhya Pradesh.
>
> Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court of Madhya Pradesh shall, until varied or revoked by rules or orders made by the

Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law he is deserving of the distinction of a Senior Advocate, such Advocate may with his consent be designated as Senior Advocate. Hence ability or standing at the Bar or special knowledge or experience in law are the norms for designating an Advocate as Senior Advocate. The expression "if the High Court is of the opinion" used in Section 16 (2) of the Advocates Act, 1961 would further clarify that it is the opinion of the High Court about the ability, standing at the Bar or special knowledge or experience in law of an Advocate which is relevant for the purpose of deciding as to who should be conferred for designation of Senior Advocate or not.

9. In the present case, as we have seen, the Full Court of High Court of Chhattisgarh has formed opinion in its meeting held on 09.01.2002 and in its Meeting held on 06.01.2005 that the Advocates named in the said resolutions be designated as Senior Advocates under Section 16 (2) of the Advocates Act, 1961. Unless, the said opinion is shown to be vitiated by mala fide or extraneous considerations, this Court in exercise of its powers under Article 226 of the Constitution will not interfere with the same. In the present case, the petitioner has not made any allegation that mala fide or extraneous consideration has influenced the Full Court of High Court of Chhattisgarh to designate respondents 5 to 21 as Senior Advocates. We are thus not in a position to interfere with the same.

10. Mr. Tamaskar submitted that it be clear from the document in Annexure P-16, annexed to the writ petition that he applied on 07.02.2005 to the Registrar General of High Court of Chhattisgarh for furnishing certified copies of the proceedings of the Full Court of the High Court in its meetings convened after 01.11.2000 for designating Advocates practising

> High Court of Chhattisgarh, apply with the necessary modifications in relation to practice and procedure in the High Court of Chhattisgarh as if made by that Court."

It will be clear from the language used in Section 25 of the aforesaid Act that only the law in force immediately before the appointed day with respect to "practice and procedure in the High Court of Madhya Pradesh" shall, with the necessary modifications, apply in relation to High Court of Chhattisgarh. The Rules framed by the High Court of Madhya Pradesh for designation of an Advocate as Senior Advocate certainly is not a rule with respect to practice and procedure in the High Court of Madhya Pradesh and will not be applicable for designation of Senior Advocate by the High Court of Chhattisgarh.

7. Mr. Tamaskar next submitted that in any case, some rules have to be followed by the High Court of Chhattisgarh for designating the Advocate of the High Court of Chhattisgarh as a Senior Advocate and in the absence of any such rules, the designation would be arbitrary and contrary to the law.

8. Section 16 (2) of the Advocates Act 1961 is quoted herein below:

> "16(2)An Advocate may with his consent, be designated as Senior Advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, (standing at the Bar or special knowledge or experience in law) he is deserving of such distinction."

Section 16 (2) quoted above does not say that the High Court has to follow the rules that may be prescribed by the High Court. Section 16 (2), however, itself prescribes the norms to be kept in mind by the High Court for designating an Advocate as a Senior Advocate. It will be clear from the aforesaid provision in Section 16(2) of the Act that only if the High

in the High Court of Chhattisgarh as Senior Advocates but no such certified copy was made available to him.

11. Certified copies of public documents are given under Section 76 of Indian Evidence Act, 1872 and said Section is quoted herein below:

> "76. **Certified copies of public documents.**- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fee therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies."

It be clear from the bare language of the Section 76 of Indian Evidence Act, 1872 that a public document which any person has a right to inspect can only be given to such person applying for a certified copy. Nothing has been brought to our notice to show that the petitioner in the present case has a right to inspect the resolutions of the Full Court of High Court of Chhattisgarh convened after 01.11.2000 for designating Senior Advocates practicing in the High Court of Chhattisgarh.

12. Mr. Tamaskar finally submitted that Section 16(3) of the Advocates Act, 1961 provides that Senior Advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interests of the legal profession, prescribe. He submitted that the averments made in the writ petition as well as the documents annexed thereto would show that some of the respondents 5 to 21 who have been designated as Senior Advocates have not been following the restrictions

imposed by the Bar Council of India in the interests of legal profession of Senior Advocates. In this writ petition, the petitioner has prayed for quashing the designation of respondents 5 to 21 as Senior Advocates and has not prayed for directing the concerned authorities to take action against those Senior Advocates who have violated the restrictions imposed by the Bar Council of India under Section 16(3) of the Advocates Act, 1961. As discussed above, we are not inclined to quash the designation of respondents 5 to 21 as Senior Advocates, but in case a separate writ petition is filed by the petitioner establishing that any of the respondents 5 to 21 have violated the restrictions imposed by the Bar Council of India under Section 16(3) of the Advocates Act, 1961, the Court may consider such a writ petition on its own merits. In this writ petition, however, we are inclined to give some directions to ensure that some of these restrictions imposed by the Bar Council of India are followed.

13. But to ensure that henceforth the designation or non-designation of an Advocate as Senior Advocate by the High Court of Chhattisgarh is transparent, it be appropriate if the High Court frames guidelines for designation of an Advocate as Senior Advocate and notifies the same to all concerned including the Advocates practising in the High Court and District Courts as has been done in other High Courts. We, therefore, direct respondent No.1 to frame guidelines for designation of an Advocate as Senior Advocate keeping in mind the provision of Section 16(2) of the Advocates Act, 1961.

14. Hence, we dispose of this writ petition with a direction to respondent No.1 to frame, within two months from today, guidelines for designation of Advocates as Senior Advocates and thereafter consider the pending applications of the Advocates for designation of Senior Advocates

in accordance with such guidelines. We also direct that the respondent No. 1 to ensure that Advocates those who have been designated as Senior Advocates including respondents 5 to 21 do not file any vakalatnama in this Court and their names do not appear in the cause list, as per the restrictions imposed by the Bar Council of India under Section 16(3) and 49 (1) (g) of the Advocates Act, 1961.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

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